

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-024
(Filed February 21, 2001)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Loops in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-035
(Filed February 28, 2001)

Application of The Telephone Connection Local Services, LLC (U 5522 C) for the Commission to Reexamine the Recurring Costs and Prices of the DS-3 Entrance Facility Without Equipment in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-034
(Filed February 28, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING ON
PACIFIC BELL TELEPHONE COMPANY MOTIONS TO TAKE OFFICIAL
NOTICE AND TO STRIKE COMMENTS OF JOINT APPLICANTS**

This ruling addresses two motions filed by Pacific Bell Telephone Company (Pacific) in the above-captioned proceeding. Pacific's

November 8, 2001¹ motion pertains to the comments filed on October 30 by AT&T Communications of California, Inc. (AT&T) and WorldCom, Inc. (WorldCom) (hereinafter “Joint Applicants”) regarding the unbundled loop interim proposal. Pacific’s November 20 motion pertains to comments filed by Joint Applicants on November 9 regarding interim pricing for unbundled switching.

Motion for Official Notice and Request to Strike Loop Comments

In the November 8 motion, Pacific makes two requests. First, Pacific asks the Commission to take official notice of (1) various commission decisions from other states which bear on the use of voice grade equivalents to determine loop costs, (2) an FCC order that discusses the use of voice grade equivalents,² and (3) a deposition from an AT&T witness in an Arizona proceeding.

Joint Applicants object to official notice of other state decisions noting that Pacific could have referenced all of these decisions in its opening comments and gives no reason for asking the commission to take notice of them after comments have been submitted. Joint Applicants state that notice of the Arizona deposition would not be appropriate because it is not an undisputed matter of law or fact.

I agree with Joint Applicants that Pacific has not provided sufficient justification for taking notice of other state decisions after the close of comments and I will deny this portion of the motion. I will take official notice of the FCC

¹ All dates are 2001 unless otherwise noted.

² In the Matters of Federal-State Joint Board on Universal Service [and] Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket Nos. 96-45 & 97-160, Tenth Report and Order, 14 FCC Rcd. 20, 156, FCC 99-304 (rel. Nov. 2, 1999).

order since that is uncontested, but I will deny notice of the Arizona deposition because it is not an undisputed matter of law or fact and Pacific could have referenced the deposition in its earlier filed comments.

Second, Pacific moves to strike portions of Joint Applicants' comments on interim rates for unbundled loops, alleging that Joint Applicants have changed their position, raised new facts and new arguments, and made material factual misrepresentations in their comments.

After careful review of the material that Pacific asks to be stricken, I do not find a valid legal basis for striking the material. I do not find that Joint Applicants have raised new facts or new arguments because I find that the disputed material was presented in response to arguments made by Pacific in opening comments. I do not find that Joint Applicants have made material factual misrepresentations, as Pacific alleges, because the disputes appear to involve differing interpretations and analysis of material supplied by both parties in the discovery process. Although Pacific and Joint Applicants disagree on interpretation of various statements made in depositions, these disagreements over interpretation do not support striking the material. Much of the material that Pacific seeks to strike from Joint Applicants' reply comments was presented in response to Pacific's comments. Through the motion to strike, Pacific is essentially submitting another round of unsolicited comments and asking to expunge Joint Applicants' arguments from the record. Pacific's motion to strike is denied.

Motion to Strike Switching Comments

Pacific's November 20 motion requests the Commission strike portions of Joint Applicants' Reply Comments on interim switching rates. Pacific claims portions of Joint Applicants' comments have no factual basis or are outside the

scope of permissible comments. Pacific further objects that declarants presenting the material do not have personal knowledge and are not competent to testify on the stated matters. Finally, Pacific objects to Joint Applicants' accusations that Pacific is attempting to mislead the Commission.

Joint Applicants counter each claim in Pacific's motion by generally arguing that the material presented is supported by facts including ARMIS data and filings by SBC in other states, and that the statements contained in Joint Applicants' comments are based on the expert opinion of its witnesses.

After careful review of the material that Pacific highlights, I do not find a valid legal basis for striking the material, with one exception discussed below. I deny the motion to strike because the disputed material appears to involve differing interpretations and opinion regarding the meaning of excerpts of material and testimony in other proceedings. Furthermore, many of Pacific's objections involve disputes between expert witnesses and I find no basis upon which to strike the opinion of experts. My review of the material that Pacific asserts contains allegations of "intentional misrepresentations" does not support striking the material. Rather, the material in question again contains expert opinions that differ from Pacific's and there is no reason to strike the passages.

I agree with Pacific on one point in its motion. The declaration of Joint Applicants' witness Klick, filed on November 9, contains references to the cost of loops which are not appropriate given that these reply comments were intended to focus on switching. I will strike references to loops in Paragraph 5 of Klick's declaration as well as his Attachment 2. Specifically, I will strike the words "and the lowest loop cost of any SBC state" from the first sentence of Paragraph 5. I will strike the words "loop and" and "Attachment 2 is the FCC's state by state calculation of total loop costs per line" from the second sentence of Paragraph 5.

I will also strike Attachment 2 of Klick's declaration. Therefore, Pacific's motion to strike is granted in part, as described above, and denied in all other respects.

Accordingly, **IT IS RULED** that:

1. Pacific Bell Telephone Company's (Pacific) November 8, 2001 "Motion to Take Official Notice of Various Commission Decisions and to Strike Portions of the Reply Comments of Joint Applicants regarding Unbundled Loop Interim Proposal" is granted in part to take notice of the Federal Communications Commission order cited in this ruling, and denied in all other respects.

2. Pacific's November 20, 2001 "Motion to Strike Portions of AT&T/WorldCom's November 9, 2001 Filing" is granted in part as set forth in this ruling, and denied in all other respects.

Dated January 7, 2002, at San Francisco, California.

/s/ DOROTHY DUDA

Dorothy Duda
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Pacific Bell Telephone Company Motions to Take Official Notice and to Strike Comments of Joint Applicants on all parties of record in this proceeding or their attorneys of record.

Dated January 7, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.